

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9934 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ADODIYABAI KAMALABEN

PARSHOTTAMBHAI

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 8th November, 1998, made by the District Magistrate, Bhavnagar, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It is alleged that the petitioner is a bootlegger and 11 offences punishable under the Bombay Prohibition Act are registered against the petitioner during the months from January 1998 to October 1998. In each of the said offences, a large quantity of country liquor and ferment were found from the possession of the petitioner. The activities of the petitioner are held to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act.

It is contended that in each of the above referred cases, the petitioner was arrested and was released on bail. However, the factum of the petitioner having been released on bail was not considered by the Detaining Authority. Non-consideration of this vital aspect would amount to non-application of mind. The Detaining Authority has not recorded his subjective satisfaction on the basis of all the relevant materials and the same, therefore, can not be said to be comprehensive. The subjective satisfaction recorded by the Detaining Authority is, therefore, vitiated.

Petition is, therefore, allowed. The impugned order dated 8th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI